

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-211019

DATE: May 25, 1983

MATTER OF: ADE Technology Corporation

DIGEST:

Contracting officer's determination of non-responsibility was reasonable where it was based upon pre-award survey which showed that the protester would be financially unable to perform the proposed contract due to an estimated \$94,660 shortfall in meeting current business commitments, and that the protester was delinquent in four out of five of its existing Government contracts.

ADE Technology Corporation protests the award of a contract to Optic Electronic Corporation under invitation for bids (IFB) No. DAAA09-83-B-2013 issued by the U.S. Army Armament Materiel Command, Rock Island, Illinois. ADE contends that the Army improperly determined the firm to be financially nonresponsible. We deny the protest.

The Army issued its solicitation, which was for 62 biocular assemblies, on November 29, 1982. Thirteen bids were received, of which ADE was the apparent low bidder. On February 11, 1983 the pre-award survey team recommended to the contracting officer that no award be made to ADE on the basis of the pre-award survey finding that ADE would be financially unable to perform the contract. The survey disclosed that ADE would face an estimated shortfall of \$94,660 in meeting current business commitments, exclusive of the proposed contract. This shortfall was expected to recur every 30 days. The survey also revealed that of the five Government contracts ADE currently was working on, four were delinquent. The surveyors doubted that ADE would be able to secure sufficient capital for the proposed contract and still be able to service its existing ones. Based upon the pre-award survey, the contracting officer, in accordance with Defense Acquisition Regulation (DAR) §§ 1-902 and 1-903.1(i) (1976 ed.), determined ADE to be nonresponsible.

025695


ADE alleges that the shortfall discussed in the pre-award survey was the direct result of a calculation error admitted, ADE says, by an Army official. ADE also complains that the pre-award survey did not take into account new business and non-cash items such as depreciation and accruals, and that part of the shortfall was due to Government delay in remitting payments.

We will not question a contracting officer's determination of nonresponsibility absent a showing that it was reached in bad faith or lacks a reasonable basis. S.A.F.E. Export Corporation, B-203346, January 15, 1982, 82-1 CPD 35. ADE has made no allegation of bad faith, and we do not find a lack of reasonable basis for the contracting officer's determination.

First, the Army disputes the existence of a calculation error in the pre-award survey that would invalidate the estimated shortfall finding, and ADE has offered no evidence to support its position. The protester has the burden to prove its case, and where the only evidence on a disputed factual matter consists of conflicting statements by the protester and the contracting agency, the burden of proof is not met. John Carlo, Inc., B-204928, March 2, 1982, 82-1 CPD 184.

Second, the pre-award survey disclosed that ADE was delinquent in 80 percent of its Government contracts. In Amco Tool & Die Co., B-207191, February 28, 1983, 62 Comp. Gen. ___, 83-1 CPD 246, we held that a contracting officer's nonresponsibility determination was reasonable where the determination was founded on a 70 percent delinquency rate based on the total number of contract line items due under the firm's contracts with that activity, and a 26 percent delinquency rate based on the firm's total number of contracts. In this case, although ADE has challenged the shortfall calculation, it has not challenged the delinquency rate finding, and we believe the delinquency rate alone would by itself afford the contracting officer a reasonable basis to reach a nonresponsibility determination.

Thus, on the record before us, we find no basis for disputing the contracting officer's nonresponsibility determination. The protest is denied.

for 
Comptroller General
of the United States